

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appln. No: 10/797,354
Appellants: Stefan Moll et al.
Filed: March 10, 2004
Title: DIALYSIS STATION
T.C./A.U.: 3626
Examiner: Linh Giang Le
Confirmation No.: 4286
Notice of Appeal Filed: February 3, 2009
Docket No.: BBMG-100US

REPLY BRIEF UNDER 37 C.F.R. § 41.37

Mail Stop Appeal Brief-Patents
Commissioner for Patents
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S I R :

Appellants submit this Reply Brief in response to the Examiner's Answer mailed on June 24, 2009. The arguments set forth herein address issues raised in the Examiner's Answer and supplement the arguments set forth in the Appeal Brief filed on April 3, 2009.

This Brief is presented in the format required by 37 C.F.R. § 41.37, in order to facilitate review by the Board. In compliance with 37 C.F.R. § 41.37(a)(1), this Brief is being filed within two months from the date of mailing of the Examiner's Answer.

I. STATUS OF CLAIMS

Claims 1-20 are pending and stand finally rejected. Claims 1-20 are the subject of this appeal.

II. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

A. Whether claims 1-20 are unpatentable under 35 U.S.C. § 103(a) unpatentable over Hogard in view of Ford further in view of Fujimoto.

III. ARGUMENT

A. Rejection Under 35 U.S.C. §103(a) Based on U.S. Patent No. 6,284,131 in View of U.S. Patent No. 6,269,340 and Further in View of U.S. Patent No. 5,339,821

In response to Appellants' arguments, the Examiner's Answer argues that it is impermissible to attack combined references individually, however, the Final Office Action and the Examiner's Answer fail to provide a reasonable basis to combine the prior art elements in the manner indicated. Instead, the Final Office Action and the Examiner's Answer utilize impermissible hindsight to argue that since individual components were found in the prior art, the claimed invention is obvious. Assuming for arguments sake that each limitation is taught, the Supreme Court in *KSR Int'l Co. v. Teleflex, Inc.*, No. 04-1350 (U.S. Apr. 30, 2007) made it clear that it is still necessary for the Examiner to identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the prior art elements in the manner claimed.

As set forth in Appellants' Appeal Brief, the only transmission of information described in Fujimoto is the transmission of test data to be stored in memory and for the doctor to send, and a patient to reply to, a diagnosis inquiry. Fujimoto is only concerned with diagnosis and does not teach or suggest the desirability of remotely transmitting a course of treatment to a patient. Similarly, while Ford et al. is cited as teaching a storage medium containing a drug library with each pump being associated with a set of associated drug delivery information, Ford et al. teaches only a single PC located at the patient location to call and input

information. Ford et al. does not teach or suggest the desirability of remotely transmitting a course of treatment to a patient. None of the references, alone or in any reasonable combination, suggest facilitating remotely transmitting a course of treatment to a patient.

In attempting to address the prior art's failure to teach or suggest a system configured wherein the execution of an instruction is acknowledged by the executing person acknowledging his or her identity at the ID input device, the Examiner's Answer indicates that Ford et al. is capable of being configured as recited in the claimed invention. Firstly, the Examiner's Answer does not identify any specific information in support of the bald assertion that Ford et al. is capable of being configured as recited in the claimed invention. Furthermore, assuming *arguendo* that Ford et al. is capable of such configuration, there still must be some reasonable basis that would have prompted a person of ordinary skill in the relevant field to modify the prior art element in the manner claimed. Ford et al. is silent on a user acknowledging in any way that an instruction has been executed, let alone by entering a user ID. Such a combination and modification of the prior art is an impermissible hindsight reconstruction relying on Appellants' application for the teaching of the invention.

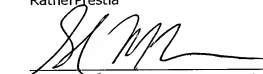
For at least these reasons, it is respectfully submitted that the cited references, alone or in any reasonable combination, fail to teach or suggest each limitation of the claimed invention. It is respectfully submitted that independent claims 1, 11 and 17 are in condition for allowance. Claims 2-10, 12-16 and 18-20 each depend from a respective one of the independent claims and are also allowable for at least the reasons set forth above.

IV. CONCLUSION

In view of the arguments set forth above and in Appellants' Appeal Brief, all pending claims are patentable over the cited references. The rejection of all of the pending claims of record should therefore be reversed with instructions to issue a Notice of Allowability. Such actions are respectfully requested.

Respectfully Submitted,

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